

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ENCINO OAKS SCHOOL, **INC.**) No. **84R-972**

For Appellant: Howard Braverman

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Encino Oaks School, Inc., for refund of franchise tax in the amount of \$150 for the income year ended August 31, 1982.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the income year in issue.

Appeal of Encino Oaks School, Inc.

The question presented by this appeal is whether appellant, a California corporation, was subject to the minimum tax imposed **by section 23153** for its income year ended August 31, 1983.

Appellant, a small private school, ceased doing business in June 1982, but did not file a certificate of winding up and dissolution with the Secretary of State. It filed its franchise tax return for the income year ended August 31, 1982, on February 6, 1984, claiming a refund of \$150. Respondent determined that appellant was liable for the \$200 minimum tax for its income year ended August 31, 1983. Since appellant had not filed a return or paid any franchise tax for that income year, respondent applied the refund claimed on its 1982 income year return to appellant's 1983 income year liability and denied the claim for refund.

Section 23153 imposes an annual \$200 minimum tax on all California corporations not otherwise subject to the general franchise tax.^{2/} This section also states that such corporations are subject to the minimum tax until the effective date of dissolution as provided in section 23331. **Section 23331 states that "the effective date of dissolution of a corporation 'is . . . the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State.' A corporation remains liable for the minimum tax until the certificate of dissolution is filed even though it has previously ceased doing business. (Appeal of Vitmora Company, Cal. St. Bd. of Equal., Sept. 27, 1978.)**

Pursuant to the provisions cited above, appellant was liable for the minimum tax for its income year ended August 31, 1983, even though it had ceased doing business, because it had not filed a certificate of winding up and dissolution with the Secretary of State. While we are sympathetic to appellant's situation, the statutes do not provide for any *waiver* of the minimum tax. The Franchise Tax Board properly applied the amount overpaid for the 1982 income year to appellant's liability for the 1983 income year. (Rev. & Tax. Code, § 26071.) Therefore, we must sustain the action of the Franchise Tax Board in denying appellant's claim for refund.

2/ A California corporation is not subject to the general franchise tax if it is not doing business within the limits of this state. (See Rev. & Tax. Code, §§ 23101 and 23151.)

Appeal of Encino Oaks School, Inc.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Encino Oaks School, **Inc.**, for refund of franchise tax in the amount of \$150 for the income year ended August 31, 1982, be and the same is hereby sustained.

Done at Sacramento, California, this 20th day of August, 1985, by the State Board of Equalization, with **Board Members** Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____	, Chairman
Conway H. Collis	, Member
Richard Nevins	, Member
Walter Harvey*	, Member
_____	, Member

*For Kenneth Cory, per Government Code section 7.9